

## **REMARKS**

### **I. Introduction**

Claims 15 to 28 are currently pending, and claims 15, 26, 27 and 28 have been amended. In view of the foregoing amendments and the following remarks, it is respectfully submitted that claims 15 to 28 are allowable, and reconsideration of these claims is respectfully requested.

Applicant notes with appreciation the acknowledgment of the claim for foreign priority and the acknowledgment that all certified copies of the priority documents have been received.

### **II. Rejection of Claims 15 to 20, and 25 to 27 under 35 U.S.C. § 102(b)**

Claims 15-20 and 25-27 were rejected under 35 U.S.C. § 102(b) as anticipated by German Patent No. DE 41 07 850 (the "Weidel '850 reference"). Applicant respectfully traverses this rejection, for the following reasons.

To anticipate a claim under § 102(b), a single prior art reference must identically disclose each and every claim element. See Lindeman Maschinenfabrik v. American Hoist and Derrick, 730 F.2d 1452, 1458 (Fed. Cir. 1984). If any claimed element is absent from a prior art reference, it cannot anticipate the claim. See Rowe v. Dror, 112 F.3d 473, 478 (Fed. Cir. 1997). Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged exactly as in the claim. Lindeman, 703 F.2d 1458 (Emphasis added). Additionally, not only must each of the claim limitations be identically disclosed, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed invention, namely the inventions of the rejected claims, as discussed above. See Akzo, N.V. v. U.S.I.T.C., 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986). To the extent that the Examiner may be relying on the doctrine of inherent disclosure for the anticipation rejection, the Examiner must provide a "basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied art." (See M.P.E.P. § 2112; emphasis in original; see also Ex parte Levy, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990)).

Amended independent claim 15 recites the following:

15. *A driver assistance night-vision system for a motor vehicle, comprising:  
a camera having an image sensor and a filter element, wherein the image sensor is configured for recording electromagnetic radiation from the visible range and the infrared range of the spectrum, and wherein the filter element is positioned in an optical path of the night-vision system in such a way that the filter element causes an attenuation of recorded electromagnetic radiation from predefined partial areas of an image scene, and wherein the predefined partial areas of the image scene are imaged onto corresponding predefined partial areas of the image sensor, and wherein the filter element has an inverse wavelength characteristic as a wavelength characteristic of a headlight of the motor vehicle.*

Independent claims 26 and 27 include features analogous to the above-recited features included in claim 15. Support for these amendments may be found in the Substitute Specification, e.g., at page 6, lines 5-9.

The Weidel '850 reference does not identically disclose, or even suggest, at least the above-identified claim features. The Weidel '850 reference merely indicates a spectral line filter F that attenuates light in the visible and infrared range **except the light from the laser** (800 nm to 2000 nm). However, this is completely contrary to the claimed limitation that **"the filter element has an inverse wavelength characteristic as a wavelength characteristic of a headlight of the motor vehicle,"** since Weidel '850 teaches a spectral line filter in order to **attenuate everything except the laser**, whereas the claimed limitation of the filter is provided in order to attenuate the light from the headlight.

Therefore, for at least the foregoing reasons, independent claims 15, 26 and 27, as well as dependent claims 16 to 20 and 25, are not anticipated by the Weidel '850 reference. It is therefore respectfully requested that the rejection be withdrawn.

### III. **Rejection of Claim 21 under 35 U.S.C. § 103(a)**

Claim 21 was rejected under 35 U.S.C. § 103(a) as unpatentable over the Weidel '850 reference, in view of German Patent No. 41 37 551 (the "Weidel '551 reference"). Applicant respectfully submits that this rejection should be withdrawn for at least the following reasons.

In order for a claim to be rejected for obviousness under 35 U.S.C. § 103(a), the prior art must teach or suggest each element of the claim. See Northern Telecom, Inc. v. Datapoint Corp., 908 F.2d 931, 934 (Fed. Cir. 1990), cert. denied, 111 S. Ct. 296 (1990); In re Bond, 910 F.2d 831, 834 (Fed. Cir. 1990). To establish a *prima facie* case of obviousness, the Examiner must show, *inter alia*, that there is some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify or combine the references, and that, when so modified or combined, the prior art teaches or suggests all of the claim limitations. M.P.E.P. §2143. In addition, as clearly indicated by the Supreme Court, it is “important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements” in the manner claimed. See KSR Int’l Co. v. Teleflex, Inc., 127 S. Ct. 1727 (2007).

Applicant notes that claim 21 ultimately depends from independent claim 15. As noted above, claim 15 is not anticipated by the Weidel ’850 reference. In addition, the Weidel ’551 reference fails to remedy the above-noted deficiencies of the Weidel ’850 reference as applied against parent claim 15. Therefore, the combination of the Weidel ’850 and Weidel ’551 references does not disclose, or suggest, all the features included in parent claim 15.

Therefore, for at least the foregoing reasons, claim 21 is patentable over the combination of the Weidel ’850 and Weidel ’551 references, since claim 21 ultimately depends from, and therefore includes all the features included in, claim 15. It is therefore respectfully requested that the rejection be withdrawn.

#### **IV. Rejection of Claims 22 and 24 under 35 U.S.C. § 103(a)**

Claims 22 and 24 were rejected under 35 U.S.C. § 103(a) as unpatentable over the Weidel ’850 reference, in view of French Patent No. 2 732 849 (the “Albou reference”). Applicant respectfully submits that this rejection should be withdrawn for at least the following reasons.

Applicant notes that claims 22 and 24 ultimately depend from independent claim 15. As noted above, claim 15 is not anticipated by the Weidel ’850 reference. In addition, the Albou reference fails to remedy the above-noted deficiencies of the Weidel ’850 reference as

applied against parent claim 15. Therefore, the combination of the Weidel '850 and Albou references does not disclose, or suggest, all the features included in claim 15.

Therefore, for at least the foregoing reasons, claims 22 and 24 are patentable over the combination of the Weidel '850 and Albou references, since claims 22 and 24 ultimately depend from, and include all the features included in, claim 15. It is therefore respectfully requested that the rejection be withdrawn.

**V. Rejection of Claims 23 and 28 under 35 U.S.C. § 103(a)**

Claims 23 and 28 were rejected under 35 U.S.C. § 103(a) as unpatentable over the Weidel '850 reference, in view of U.S. Patent No. 3,704,375 (the "Slawek reference"). Applicant respectfully submits that this rejection should be withdrawn for at least the following reasons.

Applicant notes that claim 23 ultimately depends from independent claim 15. As noted above, claim 15 is not anticipated by the Weidel '850 reference. In addition, the Slawek reference fails to remedy the above-noted deficiencies of the Weidel '850 reference as applied against parent claim 15. Therefore, the combination of the Weidel '850 and Slawek references does not disclose, or suggest, all the features included in claim 15.

Therefore, for at least the foregoing reasons, claim 23 is patentable over the combination of the Weidel '850 and Slawek references, since claim 23 ultimately depends from, and therefore includes all the features included in, claim 15.

Independent claim 28 includes features analogous to those included in claim 15, i.e., claim 28 recites "the image-sensor surface includes a coating that causes an attenuation of electromagnetic radiation . . . , wherein the coating has an inverse wavelength characteristic as a wavelength characteristic of a headlight of the motor vehicle." The Examiner admits that the Weidel '850 reference does not disclose that the filter is coated onto the image sensor. (Office Action, p. 5). Furthermore, as fully set forth above, nowhere does the Weidel '850 reference disclose, or suggest, the claimed feature that "the coating has an inverse wavelength characteristic as a wavelength characteristic of a headlight of the motor vehicle." Therefore, the Weidel '850 reference does not disclose, or suggest, all the features included in claim 28.


In addition, the Slawek reference merely indicates a coating. Thus, the Slawek reference fails to remedy the deficiencies of the Weidel '850 reference. Therefore, the combination of the Weidel '850 and Slawek references does not disclose, or suggest, all the features included in claim 28.

Therefore, for at least the foregoing reasons, independent claim 28 is not rendered obvious by the combination of the Weidel '850 and Slawek references. It is therefore respectfully requested that the rejection be withdrawn.

## VI. Conclusion

Applicant respectfully submits that claims 15 to 28 of the present application under consideration are now in condition for allowance. Prompt reconsideration and allowance of the present application are therefore earnestly solicited.

Respectfully submitted,

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